

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

DSCF Standard Mail Load Leveling

Docket No. N2014-1

PUBLIC REPRESENTATIVE'S OPPOSITION TO THE POSTAL
SERVICE'S MOTION TO STRIKE PORTIONS OF THE
PUBLIC REPRESENTATIVE'S REPLY AND SUPPLEMENTAL BRIEF

(March 12, 2014)

On March 6, 2014, the Postal Service filed a motion to strike Chapter IV, sections A.1 and A.3, and Chapter V of the Reply and Supplemental Brief of the Public Representative (Reply and Supplemental Brief).¹ The Postal Service makes three arguments in support of its Motion to Strike: (1) the Public Representative introduces and relies on "new testimony;" (2) the Public Representative improperly relies on non-evidentiary comments; and (3) the Public Representative should have presented her arguments in her Initial Brief. The Commission's regulations state that "[m]otions to strike are requests for extraordinary relief." 39 C.F.R. § 3001.21(c). In this response, the Public Representative addresses each argument and demonstrates why the "extraordinary relief" requested by the Postal Service should be denied.

Argument versus Testimony. The Postal Service's Motion to Strike conflates argument with testimony and should be denied. The Postal Service alleges that Chapter IV, sections A.1 and A.3 of the Reply and Supplemental Brief constitute testimony that should be subject to cross-examination and rebuttal.² The purpose of the

¹ United States Postal Service Motion to Strike Portions of the Reply and Supplemental Brief of the Public Representative, March 6, 2014 (Motion to Strike). The Postal Service also filed a supplemental reply brief to respond to the merits of the Public Representative's Reply and Supplemental Brief. See Supplemental Reply Brief of the United States Postal Service In Response to the Reply and Supplemental Brief of the Public Representative, March 6, 2014; United States Postal Service Motion for Leave to File a Reply Brief in Response to the Reply and Supplemental Brief of the Public Representative, March 6, 2014 (Motion for Leave to File Additional Brief). The Public Representative does not oppose the Postal Service's Motion for Leave to File Additional Brief.

² Motion to Strike at 3.

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Public Representative's discussion found in sections A.1 and A.3 is to illustrate that the Load Leveling Plan degrades DSCF Standard Mail service at a time when DSCF Standard Mail meets service performance objectives and to discuss other ongoing operational and structural changes that may be contributing to volume delivered on Mondays, the percentage of carriers on the street after 1700, and carrier overtime hours.³ The Public Representative respectfully disagrees with the Postal Service's characterization of these sections as testimonial evidence. The contents of the Reply and Supplemental Brief consist entirely of argument that highlights evidence admitted into the record and draws conclusions and inferences based on that evidence. As argument, such discussion neither requires nor warrants the extraordinary remedy of striking it from the brief.

Comments. The Postal Service improperly argues that the Commission should strike Chapter V of the Reply and Supplemental Brief. First, the Postal Service appears to argue that because it disagrees with the Public Representative's reading of Order No. 1926, the Commission should strike the Public Representative's arguments.⁴ Disagreement with another party's interpretation of a Commission order does not warrant the extraordinary remedy of striking it from a brief.⁵

Second, the Postal Service claims that Chapter V "does not cite to the evidentiary record."⁶ In particular, the Postal Service takes issue with the Public

³ Sections A.1 and A.3 consider the impacts Phases 1 and 2 of Mail Processing Network Rationalization have had and may continue to have on these issues. See pp.3-4, *infra*. See also Reply and Supplemental Brief of the Public Representative, February 27, 2014 (Reply and Supplemental Brief) at 28-33, 36-38..

⁴ Motion to Strike at 7-8.

⁵ The Postal Service's argument not only misconstrues the plain language of the Commission's order, but also directly contradicts the the Postal Service's own argument that the "best practices" test should be interpreted prospectively. See Docket No. R2013-11, Renewed Exigent Request of the United States Postal Service in Response to Commission Order No. 1059, September 26, 2013, at 19 (stating "as the plain language of the statute indicates, the consideration of 'honest, efficient, and economical management' is part of a prospective inquiry. In particular, the exigency provision directs the Commission to determine whether an exigent increase is 'necessary to *enable* the Postal Service' to '*maintain and continue*' the provision of universal postal services adapted to the needs of the United States, if the Postal Service acts in an 'honest, efficient, and economical' manner. The terms 'enable,' 'maintain,' and 'continue' are forward-looking, not retrospective. Furthermore, the 'honest, efficient, and economical' management standard is an integral component of that forward-looking inquiry, rather than a separate element."). In addition, 39 U.S.C. § 404(b) also contains similar language requiring "best practices of honest, efficient, and economical management."

⁶ Motion to Strike at 7.

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Representative's use of Library Reference USPS-LR-N2014-1/12 and comments filed by interested persons in this proceeding. Here, the Postal Service confuses argument with evidence. Citations to Library Reference USPS-LR-N2014-1/12 and the comments further the Public Representative's primary argument in Chapter V that the Postal Service's failed communications with postal customers is inconsistent with "best practices of honest, efficient, and economical management."

Finally, the Postal Service's claim that Library Reference USPS-LR-N2014-1/12 does not constitute record evidence is misplaced. Library Reference USPS-LR-N2014-1/12 was provided in response to Interrogatory PR/USPS-T1-11, a designated interrogatory in the record of this proceeding.⁷ On February 12, 2014, witness Linda M. Malone (Witness Malone) declared under penalty of perjury that library references associated with designated interrogatories were prepared by her or under her direction and that her oral response to the written questions would have been the same.⁸ Thus, Library Reference USPS-LR-N2014-1/12 constitutes record evidence of this proceeding.

Timeliness of argument. The Postal Service's Motion to Strike incorrectly blames the Public Representative, rather than its own delayed filings, for the contents of the Reply and Supplemental Brief. The Postal Service claims that sections A.1 and A.3 of Chapter IV "are based on information readily available at the time initial briefs were due."⁹ While this is technically correct, the Postal Service filed its response to Interrogatory PR/USPS-T1-25 approximately 24 hours before the briefing deadline, effectively depriving all parties of the ability to make arguments based on its response.¹⁰ Interrogatory PR/USPS-T1-25 requested analysis of the interaction between the Load Leveling Plan and Phases 1 and 2 of Mail Processing Network Rationalization (MPNR), both generally and specifically with regard to percentage of volume delivered on

⁷ See Tr. at 2, 26; Motion of the United States Postal Service for the Admission of the Direct Testimony of Linda M. Malone (USPS-T1-1) and Her Designated Discovery Responses into Evidence, February 14, 2014.

⁸ Tr. at 61.

⁹ Motion to Strike at 5.

¹⁰ Responses of the United States Postal Service Witness Malone to Public Representative Discovery Requests (PR/USPS-T1-25(b), (c)-(f)), February, 19, 2014 (Response to PR/USPS-T1-25).

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Mondays and carriers working after 1700. In response, Witness Malone stated that the Postal Service “has not performed analysis”¹¹ concerning the interaction between the Load Leveling Plan and any of the issues raised by the Public Representative in Interrogatory PR/USPS-T1-25.

Sections A.1 and A.3 of Chapter IV directly address the issues raised by Interrogatory PR/USPS-T1-25 and discussed by Witness Malone in the response.¹² The Public Representative waited to detail her concerns regarding the impacts of MPNR until she could assess those issues in light of the Response to PR/USPS-T1-25. The Public Representative anticipated that the Response to PR/USPS-T1-25 would provide her with insight that would either confirm or negate her initial concerns regarding the impacts of MPNR. Consequently, the Public Representative prudently waited for the Response to PR/USPS-T1-25 prior to addressing the issues associated with MPNR and the Load Leveling Plan. Unfortunately, the Response to PR/USPS-T1-25 failed to provide the expected insight.

For the foregoing reasons, the Commission should deny the Postal Service’s Motion to Strike.

Respectfully Submitted,

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¹¹ *Id.* at 3.

¹² Reply and Supplemental Brief at 32-33 (detailing the Public Representative’s concern that MPNR could be driving the Postal Service’s plan to extend DSCF Standard Mail service standards) & 37-38 (detailing the Public Representative’s concern that the volume of mail delivered on Mondays and the percentage of carriers out after 1700 may have been exacerbated by Phase 1 of MPNR). See also Response to PR/USPS-T1-25 at 2 (claiming that the “opportunity to meet service expectations in the more efficient network that will emerge from MPNR will be enhanced by the implementation of load leveling”).